

FILED

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Kevin L. Smith

CLERK

of the supreme court,
court of appeals and
tax court

FRIEDLANDER, Judge

Jeremy Brandeberry was convicted of Theft¹ as a class D felony. On appeal, Brandeberry argues that the evidence was insufficient to sustain his conviction.

We affirm.

The facts most favorable to the conviction follow. At approximately 5:15 p.m. on August 3, 2007, Heidi McRobie, an Asset Protection Associate at Wal-Mart in Elkhart, Indiana, noticed two male shoppers loading two separate carts with identical merchandise. She also observed the two men speaking with each other. McRobie contacted her supervisor, Craig Custer, and they both kept the men under surveillance. When the men split up, McRobie followed one of the men to register four where he proceeded to check-out and pay for the items in his cart before leaving the store. Meanwhile, the other shopper, Brandeberry, guided his cart to the stationery aisle, left the cart there, and exited out the west entrance of the store.

Approximately ten minutes later, McRobie observed Brandeberry entering through the west entrance with a receipt in his hand. Brandeberry returned to the cart he had left in the stationery aisle and pushed it toward the west entrance without attempting to pass through a register line and without paying for the items.² After Brandeberry passed all points of sale, he was detained until the police arrived. While being detained, Brandeberry repeatedly declared that he had a receipt. McRobie described the incident as a “double receipt scam” and explained that she was trained to watch out for such behavior. *Transcript* at 96.

¹ Ind. Code Ann. § 35-43-4-2 (West, Premise through 2008 2nd Regular Sess.).

² The value of the items was approximately \$400.

On August 8, 2007, the State charged Brandeberry with theft as a class D felony. At the conclusion of Brandeberry's April 10, 2008 jury trial, the jury rendered its verdict finding Brandeberry guilty as charged. On May 14, 2008, the trial court sentenced Brandeberry to twenty-months incarceration.

Brandeberry argues that the evidence was insufficient to sustain his conviction. Our standard of review for a challenge to sufficiency is well settled. When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh the evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id.* at 126 (*quoting Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

To convict Brandeberry of theft as a class D felony, the State was required to prove beyond a reasonable doubt that Brandeberry knowingly exerted unauthorized control over the property of Wal-Mart with the intent to deprive Wal-Mart of any part of its value or use. *See* I.C. § 35-43-4-2. Brandeberry argues that the State's evidence failed to establish that he knowingly exerted unauthorized control. In support of his argument Brandeberry points out that Wal-Mart's video coverage of the areas where the main elements of the scam occurred were not preserved and entered into evidence, there was no evidence that the receipt he possessed was the receipt given to the individual that went through register four and paid for

items identical to those in Brandeberry's cart, and there was no testimony that the electronic surveillance poles alerted that unpaid-for items were being taken out of the store. Brandeberry also directs us to his testimony wherein he presented his version of events. Brandeberry's arguments are simply requests that this court reweigh the evidence and judge the credibility of the witnesses, a task this court will not undertake on appeal. *See McHenry v. State*, 820 N.E.2d 124. The jury was the trier of fact and was in a better position to weigh the evidence and judge the credibility of the witnesses, and was entitled to determine which version of the incident to credit. *Id.* We will not substitute our judgment for that of the jury in this regard. From the evidence set forth above, the jury could have reasonably concluded beyond a reasonable doubt that Brandeberry was guilty of theft as a class D felony.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur